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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/783,995

02/20/2004

Robert S. Whitehouse

14074-014001

4368

26161

7590

10/30/2008

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EXAMINER

RONESI, VICKEY M

ART UNIT

PAPER NUMBER

1796

NOTIFICATION DATE

DELIVERY MODE

10/30/2008

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

PATDOCTC@fr.com

<b>Office Action Summary</b>	<b>Application No.</b> 10/783,995	<b>Applicant(s)</b> WHITEHOUSE, ROBERT S.	
	<b>Examiner</b> VICKY RONESI	<b>Art Unit</b> 1796	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 14 July 2008.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 85-113 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 85-113 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>8/11/08</u> .   | 6) <input type="checkbox"/> Other: _____                          |



### **DETAILED ACTION**

1. All outstanding objections and rejections are withdrawn in light of applicant's amendment filed on 7/14/2008.
2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior office action.
3. The new grounds of rejection set forth below are necessitated by applicant's amendment filed on 7/14/2008. In particular, claims 85-113 are new. Thus, the following action is properly made final.

### ***Claim Objections***

4. Claim 104 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Specifically, 4-hydroxypropionate is not included in the Markush group of claim 103 (on which claim 104 is dependent). It is noted that 4-hydroxypropionate cannot exist because it only has 3 carbon atoms and cannot have a 4- substituent. In the interest of compact prosecution, in the prior art rejection below, 4-hydroxypropionate is read as 3-hydroxypropionate given that it is clear that 4- is a typographical error since claim 3 lists 3-hydroxypropionate.

***Claim Rejections - 35 USC § 103***

5. Claims 85-113 are rejected under 35 U.S.C. 103(a) as being unpatentable over Autran et al (US 6,838,037).

Autran et al discloses a composition used to make articles (col. 15, lines 27-34) comprising at least one first PHA copolymer comprising comonomer units of formula (I) which reads on 3- or 4-hydroxybutyrate or 3-hydroxypropionate *inter alia* and formula (II) or formula (III) which reads on 4-hydroxybutyrate *inter alia* (col. 6, line 36 to col. 7, line 12) and at least one second PHA copolymer that is a homopolymer or copolymer comprising units of formula (IV) which reads on 3- or 4-hydroxybutyrate *inter alia* and formula (II) or formula (III) which read on 4-hydroxybutyrate *inter alia* (col. 7, lines 13-52). The blends can be mixed with other polyhydroxyalkanoate (i.e., third PHA) or other polyesters in an amount of at least 50 wt % (col. 14, line 65 to col. 15, line 12).

Autran et al fails to exemplify a blend of three different PHAs.

Even so, given that Autran et al teaches that at least one first PHA or at least one second PHA can be used to prepare the blend and further given that the first and second PHAs can be mixed with other PHAs as well as with other polymeric materials, it would have been obvious to one of ordinary skill in the art to prepare a blend of three different PHAs for use to make an article as taught by Autran et al.

***Response to Arguments***

6. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vickey Ronesi whose telephone number is (571) 272-2701. The examiner can normally be reached on Monday - Friday, 8:30 a.m. - 5:00 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vasu Jagannathan can be reached on (571) 272-1119. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished

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applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

10/23/2008

Vickey Ronesi

/V. R./

Examiner, Art Unit 1796

/Vasu Jagannathan/

Supervisory Patent Examiner, Art Unit 1796